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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,545	02/25/2002	Sam L. Samuels	AD6799USNA	7978
23906	7590	09/23/2003	EXAMINER AUGHENBAUGH, WALTER	
E I DU PONT DE NEMOURS AND COMPANY LEGAL PATENT RECORDS CENTER BARLEY MILL PLAZA 25/1128 4417 LANCASTER PIKE WILMINGTON, DE 19805			ART UNIT	PAPER NUMBER

6

AUGHENBAUGH, WALTER

ART UNIT PAPER NUMBER

1772

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/084,545	SAMUELS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Walter B Aughenbaugh	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 July 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 18-31 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 and 32-35 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> . | 6) <input type="checkbox"/> Other: _____ .                                   |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in the abstract in Applicant's amendment filed July 3, 2003 (Paper 5) have been received and considered by Examiner.
2. The amendments made in claims 1, 2, 5, 6, 9, 10, 14, 16, 18, 25, 26, 29, 30, 33 and 35 given on pages 3-5 of Paper 5 have been received and considered by Examiner.

### ***Election/Restrictions***

3. Applicant's election with traverse of Group I, claims 1-17 and 32-34 in Paper No. 5 is acknowledged. The traversal is on the ground(s) that "Claims 18-31 have been amended to make it clear that they all pertain to a method for making the cover of Claim 1" and that consequently "the Groups are clearly linked, and any added search burden is reasonable". This is not found persuasive because Group I (claims 1-17 and 32-34 and also claim 35 per the amendment made to claim 35 in Paper 5) is still nonetheless drawn to a balloon catheter cover and Group II (currently claims 18-31) is still nonetheless drawn to a process for making a tubular structure. As previously stated in paragraph 4 of Paper 4, Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

The requirement is still deemed proper and is therefore made FINAL.

### ***Oath/Declaration***

4. The objection to the oath/declaration made of record in paragraph 7 of Paper 4 has been withdrawn due to Applicant's arguments presented on page 6 of Paper 5.

***Information Disclosure Statement***

5. Initialed copies of the documents requested by Applicant on page 12 of Paper 5 has been included with this Office Action (Paper 6).

***WITHDRAWN OBJECTIONS***

6. The objection to the abstract made of record in paragraph 8 of Paper 4 has been withdrawn due to Applicant's amendments to the abstract in Paper 5.

***WITHDRAWN REJECTIONS***

7. The 35 U.S.C. 112 rejection of claims 1, 2, 5, 6, 9, 10, 14 (in regard to the antecedent basis issue discussed on the bottom of page 4 of Paper 4), 16 and 33 made of record in paragraph 10 of Paper 4 has been withdrawn due to Applicant's amendments in Paper 5.

8. The 35 U.S.C. 112 rejection of claim 7 made of record in paragraph 10 of Paper 4 has been withdrawn due to Examiner's reconsideration. The phrase "the axis" in the third line of the claim necessarily refers to "the balloon axis" recited in the second line of the claim.

9. The 35 U.S.C. 112 rejection of claims 14 and 15 in regard to the term "spandex" made of record in paragraph 10 of Paper 4 has been withdrawn due to Applicant's arguments on page 7 of in Paper 5 that cite the "Rules and Regulations Under the Textile Fiber Products Identification Act" of the Federal Trade Commission (March 2002), a copy of which was attached to Paper 5.

***REPEATED REJECTIONS***

***Claim Rejections - 35 USC § 112***

10. The 35 U.S.C. 112 rejection of claim 15 (only in regard to the phrase "the segmented polyurethanes") made of record in paragraph 10 of Paper 4 has been repeated for the reasons previously made of record in paragraph 10 of Paper 4. While Applicant argues that "as defined

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[by "Rules and Regulations Under the Textile Fiber Products Identification Act" of the Federal Trade Commission (March 2002)], spandex itself provides sufficient antecedent basis for 'the segmented polyurethanes of the spandex fibers'", it is the position of the Examiner that claim 15 as it currently stands fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by the second paragraph of 35 U.S.C. 112; i.e. for the purpose of reading the claims, the phrase "the segmented polyurethanes" lacks antecedent basis because the composition intended to be recited by the term "spandex" is not adequately recited. Claim 15 reads as if a claim upon which it depends recites the term "the segmented polyurethanes".

***Claim Rejections - 35 USC § 103***

11. The 35 U.S.C. 103(a) rejection of claims 1-9, 11-14 and 17 over Cook in view of Fowler et al. has been repeated for the reasons previously made of record in paragraph 12 of Paper 4 and for the following reasons that address the amendments made to the claims in Paper 5.

In regard to claim 1, Fowler et al. teach that the circumferential yarns have stretch and recovery properties (since the circumferential yarns are elastomeric, see col. 2, lines 64-68) and that the longitudinal yarns have more resistance to stretch than the circumferential yarns (since Fowler et al. teach that the longitudinal yarns are non-stretch yarns, see col. 4, lines 27-37).

In regard to claim 2, Fowler et al. teach that the change in length in the longitudinal direction over the full range of stretch and recovery in the circumferential direction is less than 0.25 times the change in the diameter over the full range of stretch and recovery since Fowler et al. teach that when the longitudinal yarn is the non-stretch yarn, the tube expands radially but expands much less or not at all in the axial (i.e. longitudinal) direction (col. 4, lines 33-37).

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In regard to claim 5, Fowler et al. teach that the degree of stretch in the circumferential direction is such that the diameter of the cover when stretched is more than 2 times the diameter of the cover when collapsed since Fowler et al. teach that the expansion of the radius of the tube is greater than 300% (col. 3, line 63-col. 4, line 5 and col. 6, lines 48-56).

In regard to claim 6, Fowler et al. teach that the degree of stretch is such that the diameter of the cover when stretched is more than 3 times the diameter of the cover when collapsed since Fowler et al. teach that the expansion of the radius of the tube is greater than 300% (col. 3, line 63-col. 4, line 5 and col. 6, lines 48-56).

The amendment to claim 9 made in Paper 5 corrects an informality and does not change the ground of rejection. The amendment to claim 14 made in Paper 5 addresses a lack of antecedent basis issue and does not change the ground of rejection.

12. The 35 U.S.C. 103(a) rejection of claim 10 over Cook in view of Fowler et al. and in further view of Chaikof et al. has been repeated for the reasons previously made of record in paragraph 13 of Paper 4, for the reasons provided above that address the amendments made to the claim 1 in Paper 5, and for the following reasons that address the amendment made to claim 10 in Paper 5. Fowler et al. teach that the longitudinal yarns are axial yarns that resist stretching (col. 4, lines 27-37).

13. The 35 U.S.C. 103(a) rejection of claim 15 over Cook in view of Fowler et al. and in further view of Gilding et al. has been repeated for the reasons previously made of record in paragraph 14 of Paper 4 and for the reasons provided above that address the amendments made to claims 1 and 14 in Paper 5.

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14. The 35 U.S.C. 103(a) rejection of claims 32-34 over Cook in view of Fowler et al. and in further view of Killion et al. has been repeated for the reasons previously made of record in paragraph 16 of Paper 4, for the reasons provided above that address the amendments made to the claim 1 in Paper 5, and for the following reasons that address the amendments made to claim 33 in Paper 5.

In regard to claim 33, the term “braiding” lacks antecedent basis and therefore has not been given patentable weight; neither claim 1 nor 32 requires that the fabric of the sleeve be braided, and claim 33 does not introduce a positive limitation that the fabric of the sleeve is braided. The 35 U.S.C. 103(a) rejection of claim 33 over Cook in view of Fowler et al. and in further view of Killion et al. made of record in paragraph 16 of Paper 4 that concludes “one of ordinary skill in the art would have recognized to have varied the yarn spacing along the length of the tubular structure [taught by Cook in view of Fowler et al.]” stands since the amendments made in claim 33 (other than the addition of the “braiding” term) address the basis for the 35 U.S.C. 112 rejection of claim 33 made of record in paragraph 10 of Paper 4. Furthermore, the recitation “the varied properties along the length of the sleeve are produced by varying the braiding yarn spacing along the length of the sleeve” reads as a method limitation and therefore has been given little patentable weight since the method of forming the cover is not germane to the issue of patentability of the cover itself.

#### ***NEW OBJECTIONS***

15. The abstract of the disclosure is objected to because the phrase “This invention pertains to” (first line) can be implied. Correction is required. See MPEP § 608.01(b).

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

#### ***NEW REJECTIONS***

##### ***Claim Rejections - 35 USC § 112***

16. Claim 33 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 33 recites the limitation "braiding" in the third line of the claim. There is insufficient antecedent basis for this limitation in the claim.

##### ***Claim Rejections - 35 USC § 103***

17. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Fowler et al. and in further view of Zafiroglu.

Cook and Fowler et al. teach the balloon catheter cover as discussed above and in paragraph 12 of Paper 4. Cook and Fowler et al. fail to teach that the elastomeric yarns are covered. Zafiroglu, however, discloses that covering an elastic yarn with a hard yarn improves stitching continuity and facilitates the use of very low tensions in the elastic feed yarns (col. 4, lines 41-46). Therefore, one of ordinary skill in the art would have recognized to have covered the elastomeric yarn of Cook and Fowler et al. with a hard yarn to improve stitching continuity and facilitate the use of very low tensions in the elastic feed yarns as taught by Zafiroglu.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have covered the elastomeric yarn of Cook and Fowler et al. with a hard yarn to improve stitching continuity and facilitate the use of very low tensions in the elastic feed yarns as taught by Zafiroglu.

18. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cook in view of Fowler et al., and in further view of Killion et al.

Cook, Fowler et al. and Killion et al. teach the catheter balloon cover as discussed above and in paragraphs 12 and 16 of Paper 4. In regard to claim 35, the recitation “the non-cylindrical shape is obtained by forming the cover over a shaped mandrel” is a method limitation and therefore has not been given patentable weight since the method of forming the cover is not germane to the issue of patentability of the cover itself.

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

19. Applicant's arguments on pages 8-10 of Paper 5 regarding the 35 U.S.C. 103(a) rejection of claims 1-9, 11-14 and 17 over Cook in view of Fowler et al. have been fully considered but are not persuasive.

Applicant argues that “Cook does not teach or suggest a balloon catheter ‘cover’”. As made of record in paragraph 12 of Paper 4, Cook teaches a balloon catheter cover comprising a tubular elastic fabric structure (item 23, Fig. 2) that covers the inner layer (item 22, Fig. 2) of the balloon (item 12, Fig. 2) (col. 2, lines 29-45). The phrase “balloon catheter cover” is interpreted by Examiner to recite a cover that is associated with a balloon catheter. The phrase “balloon catheter cover” (or the remainder of the language of the claim) does not positively recite any structural limitations that limit the cover to a cover that covers an entire balloon catheter. The

tubular elastic fabric structure (item 23) of Cook is a balloon catheter cover because it covers the inner layer (item 22) of the balloon (item 12) as made of record in paragraph 12 of Paper 4.

Applicant argues that the “present invention has elastic yarn in the circumferential direction and hard yarn in the longitudinal direction, not parallel to each other”; the Office Action (paragraph 12 of Paper 4) acknowledges that “Cook fails to teach that the fabric structure is of interconnected circumferential and longitudinal yarns”, and Fowler et al. is the secondary reference that teaches the circumferential and longitudinal yarn structure. A 35 U.S.C. 102 rejection as anticipated by Cook is not of record.

Applicant asserts (in the first full paragraph of page 9 of Paper 5) that the fabric of Cook “is capable of increasing in length at the same time it expands in diameter because the elastomeric yarns are in both the circumferential and longitudinal direction”. Applicant’s statement that “the elastomeric yarns [of Cook] are in both the circumferential and longitudinal direction” is contradictory to Applicant’s argument in the last full paragraph of page 8 of Paper 5 that Cook does not teach yarns arranged in a circumferential/longitudinal relationship.

Applicant’s interpretation of the teaching of Cook (col. 3, lines 51-55 as cited by Applicant) that the fabric of Cook “is capable of increasing in length at the same time it expands in diameter” actually includes the condition where the fabric expands in the circumferential direction while the length of the fabric does not change; the phrase “capable of increasing in length” does not require that the fabric increase in length. It has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. *In re Hutchison*, 69 USPQ 138. Furthermore, Cook plainly teaches that the balloon

(item 12), and therefore the cover (fabric structure, item 23), is of fixed length during expansion (col. 3, line 46-58).

In response to Applicant's piecemeal analysis of Cook, it has been held that one cannot show non-obviousness by attacking references individually where, as here, the rejections are based on combinations of references. *In re Keller*, 208 USPQ 871 (CCPA 1981).

In response to Applicant's argument in the third full paragraph of page 9 of Paper 5 that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). Applicant argues that there is "no basis provided in the office action that would lead one skilled in the art of 'catheters' to look to 'fluid-dispensing containers' such as disclosed in Fowler et al. for modifying a compliant (elastic) 'balloon catheter'". Cook teaches a balloon catheter cover that comprises an elastic fabric structure that expands such that an increase in diameter does not require a decrease in length of the balloon and that the balloon (item 12), and therefore the cover (fabric structure, item 23), is of fixed length during expansion (col. 3, line 46-58). Therefore, one of ordinary skill in the art would have been amply motivated to consult Fowler et al., which also teaches a tubular elastic structure that has stretch and recovery

capabilities in the circumferential direction while having no appreciable elongation at all in the longitudinal direction as made of record in paragraph 12 of Paper 4, in order to explore alternate fabric structures that achieve the effect of expansion of an elastic fabric tube in the circumferential direction while maintaining a fixed tube length as taught by Cook. The fabric taught by Fowler et al. is a fabric structure that achieves the effect of expansion of an elastic fabric tube in the circumferential direction while maintaining a fixed tube length that Cook achieves with the particular fabric taught by Cook. The fact that Fowler et al. teach a fluid-dispensing container is a matter of intended use; the fabric taught by Fowler et al. would readily be used by one of ordinary skill in the balloon catheter art since the fabric taught by Fowler et al. achieves exactly the same mechanical effects that are desired by those of ordinary skill in the balloon catheter art as taught by Cook as discussed above. Note that it has been held that a recitation with respect to the manner in which a claimed article is intended to be employed does not differentiate the claimed article from a prior art article satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQd 1647 (1987). In response to Applicant's argument in regard to the use "for both compliant and non-compliant (folded, non-elastic) balloon catheters", the limitations on which the Applicant relies are not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064.

Applicant argues that "Cook requires that the elastomer and the hard fibers be parallel to each other"; this assertion is false, the condition that the elastomer and the hard fibers be parallel to each other is preferred as taught by Cook (see col. 3, lines 10-17). In response to Applicant's argument that the fabric of Cook is required to be a loosely knitted "loopy" structure, there is no

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teaching in Fowler et al. that disallows this condition. In response to Applicant's argument that the fabric of Cook is required to "be capable of expanding three-dimensionally", the term "capable" does not "require" anything as discussed above. Furthermore, the fabric of Fowler et al. is capable of expanding three-dimensionally because Fowler et al. teach that when the longitudinal yarn is a non-stretch yarn, the tube expands radially but expands much less or not at all in the axial (i.e. longitudinal) direction (col. 4, lines 33-37).

In response to Applicant's arguments on page 10 of Paper 5, as discussed above, Cook does indeed teach a balloon catheter cover; in response to Applicant's argument that Cook does not teach a balloon cover, the limitation on which the Applicant relies (i.e. "balloon cover") is not stated in the claims. It is the claims that define the claimed invention, and it is the claims, not specifications that are anticipated or unpatentable. *Constant v. Advanced Micro-Devices Inc.*, 7 USPQ2d 1064. Cook plainly teaches that the balloon (item 12), and therefore the cover (fabric structure, item 23), is of fixed length during expansion (col. 3, line 46-58) and therefore teaches "longitudinal dimensional stability". In response to Applicant's argument that Cook "does not teach elastic circumferential fibers and less elastic longitudinal fibers", the claims are rejected under 35 U.S.C. 103, not 35 U.S.C. 102. Cook teaches a "balloon catheter cover" as discussed a few times above; the tubular elastic fabric structure (item 23) of Cook is a balloon catheter cover because it covers the inner layer (item 22) of the balloon (item 12) as made of record in paragraph 12 of Paper 4.

20. Applicant's arguments on page 10 of Paper 5 regarding the 35 U.S.C. 103(a) rejection of claim 10 over Cook in view of Fowler et al. and in further view of Chaikof et al. have been fully considered but are not persuasive.

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Applicant argues that while Chaikof et al. "does provide for the possibility of triaxial braids... these are not preferred"; Chaikof et al. therefore teaches triaxial braids, the extent to which they are preferred is irrelevant. The wires to which Applicants refer are mentioned as a replacement of the warp strands in the triaxial braid of Chaikof et al. and are therefore unrelated to the triaxial braid taught by Chaikof et al. (col. 8, lines 10-19). Regardless of how large a portion the warp strands of the triaxial braid is used over the device, the triaxial braid exists due to the presence of the warp strands. Applicant asserts that "this would teach away from a triaxial braid for the entire fabric structure as claimed"; a triaxial braid for the entire fabric structure is not required by the claims. Claim 10 recites that "the fabric structure is a triaxial braid" and claim 1, upon which claim 10 depends, recites that the cover comprises the fabric structure; one of ordinary skill in the art would have recognized to have used the teaching of Chaikof et al. that the warp strands may only be included over a small portion of the device so that the ability of the device to bend is sufficient while longitudinal contraction of the structure is prevented as taught by Chaikof et al.

21. Applicant's arguments on page 11 of Paper 5 regarding the 35 U.S.C. 103(a) rejection of claim 15 over Cook in view of Fowler et al. and in further view of Gilding et al. have been fully considered but are not persuasive.

Applicant's arguments rely entirely on the arguments made in regard to the 35 U.S.C. 103(a) rejection of claims 1-9, 11-14 and 17 over Cook in view of Fowler et al. that have been addressed above.

22. Applicant's arguments on page 11 of Paper 5 regarding the 35 U.S.C. 103(a) rejection of claim 16 over Cook in view of Fowler et al. and in further view of Gilding et al. and in further

view of Zafiroglu et al. are rendered moot due to the withdrawal of the rejection in this Office Action (Paper 6) due to Applicant's amendments.

Furthermore, Applicant's arguments rely entirely on the arguments made in regard to the 35 U.S.C. 103(a) rejection of claims 1-9, 11-14 and 17 over Cook in view of Fowler et al. that have been addressed above.

23. Applicant's arguments on pages 11-12 of Paper 5 regarding the 35 U.S.C. 103(a) rejection of claims 32-34 over Cook in view of Fowler et al. and in further view of Killion et al. have been fully considered but are not persuasive.

Applicant's arguments rely entirely on the arguments made in regard to the 35 U.S.C. 103(a) rejection of claims 1-9, 11-14 and 17 over Cook in view of Fowler et al. that have been addressed above.

### *Conclusion*

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 703-305-4511. The examiner can normally be reached on Monday-Thursday from 9:00am to 6:00pm and on alternate Fridays from 9:00am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 703-308-4251. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

wba  
09/16/03 *WBA*

*Harold Pyon*  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772*

*9/17/03*